Office Supreme Court, U.S.
FILED
JAN. 2 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 180

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, ET AL., Petitioners,

versus

RISS AND COMPANY, INC., Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF THE RESPONDENT.

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v.

RISS AND COMPANY, INC., - - - - *Respondent.*

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF THE RESPONDENT.

May it please the Court:

QUESTIONS PRESENTED.

1. This is an action seeking individual accounting and monetary awards on behalf of six former employees of Riss and Company, Inc., who abandoned their posts of employment on January 25, 1960, and took voluntary leaves of absences without notice to the employer. They seek $2.50 per week per employee for health and welfare benefits, the sum of $4.00 per week per employee for pension benefits, individual vacation pay, back wages and reinstatement. (See prayer in original Complaint, R. 6.)

Does the United States District Court at Louisville, Kentucky, have jurisdiction under Section 301 of the Labor Management Relations Act as amended?

2. Is the purpose of the Labor Management Relations Act to protect the general welfare of a community by minimizing a substantial disruption of interstate commerce, or is its purpose to compel the federal district courts to assume jurisdiction of the trivial monetary controversies arising between employees and employers over wages, vacation benefits and related minor issues which, traditionally, have been adjudicated in the local inferior courts?

3. Does the Labor Management Relations Act require the federal district courts to act as the enforcement and collection agency of *every** grievance award throughout our land, regardless of the minuteness of the issue, or was it designed to apply to industries or communities as a whole where there has been a substantial obstruction to the free flow of commerce?

4. Was the refusal to employ back the six individual Petitioners who abandoned their posts voluntarily in order to participate in an illegal strike justified, thus failing to state a legal cause of action in the Petitioners' complaint?

5. Once state court jurisdiction has been invoked, is there concurrent federal jurisdiction without the customary removal procedure?

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*All emphasis supplied.

STATEMENT OF FACTS.

On January 25, 1960, Petitioners Virgil Peay, John Kendall, George Abell, Newton Stucker, Sylvester Davidson and Elvin Peay were employed by the Respondent at its truck terminal in Louisville, Kentucky. All were members of Petitioner's Union, Local No. 89, and Elvin Peay was the steward thereof.

Local No. 107 of the same International Union with local headquarters at Philadelphia, Pennsylvania, sent several of its members to the Louisville Terminal of the Respondent early on the work day of January 25, 1960, and they commenced carrying and displaying conspicuously strike signs with reference to this Respondent.

Without any notice whatsoever, and contrary to different provisions of the collective bargaining contract, the aforesaid six individual Petitioners immediately abandoned their respective posts of employment at the said time and place. None of the Petitioners, including Local No. 89, sought negotiations and settlement as provided for by the written contract. To the contrary, the six individual Petitioners went to the outer entrance of the Respondent's terminal and proceeded to, and did, march back and forth near said entrance, carrying signs captioned "Local 89 on Strike" and "Riss-Strike" and physically threatened customers, invitees and other employees of the Respondent and, acting in concert with each other, did strike, commit a tie-up and work stoppage, all of which con-

tinued for a period of several weeks and without making any attempt to invoke the grievance procedure (R. 19).

On January 28, 1960, the Respondent filed suit in the Jefferson County, Kentucky, Circuit Court in connection with the action arising out of the same circumstances and involving the same issues. All of the Petitioners are duly before that Court, have filed responsive pleadings thereto and a restraining order was entered on the same date (R. 16).

Because of the abandonment of their posts in violation of the terms of their contract, it was necessary for the Respondent to, and it did, make other arrangements by separate agreement with an independent contractor to handle the cartage duties previously performed by the six individual Petitioners, all of whom are reported to have been employed elsewhere continuously since February 16, 1960 (R. 19).

The individual Petitioners did not file any grievance until reporting back to work on February 15, 1960, approximately two weeks after the Respondent had already made other necessary arrangements for the work in question. The subsequent grievance procedure was a moot and sham proceedings in that the contract was no longer in force because of the previous actions of the Petitioners in breaching the contract. There is now pending in the State Court a claim against the same six Petitioners for monetary damages growing out of their actions in question (R. 16).

United States District Judge Henry L. Brooks dismissed the claim in this action for lack of juris-

diction in view of the facts and authorities discussed hereinafter.

The United States Court of Appeals for the Sixth Circuit affirmed the decision of Judge Brooks and further held that the complaint did not contain facts reflecting that the Petitioners were warranted under the contract to leave their jobs on January 25, 1960. A petition for rehearing was denied by the same Court.

ARGUMENT.

I.

The Labor Management Relations Act Itself Reflects It Is To Be Utilized Only in Cases Affecting Commerce, an Industry as a Whole, or the General Welfare of the Community, and Is Not Applicable in a Personal Accounting of Purely Individual Alleged Claims of Employees or Employers.

A reading of the Labor Management Relations Act, as amended, produces a profound and articulate realization that such Act was never enacted by the Congress for the purpose of settling individual monetary disputes between employer and employee. To the contrary, we observe in Section 1 of the Act (29 U.S.C. Sec. 141) under the heading of "Short Title and Declaration of Policy" that neither labor nor management ". . . has any right in its relations with any other to engage in acts or practices *which jeopardize the public health, safety, or interest.*"

The same Section provides that it is the purpose and policy of the Act to promote the "full flow of com-

merce" and to deal with situations ". . . which affect commerce *and are inimical to the general welfare, and to protect the right of the public* in connection with labor disputes affecting commerce."

Under Section 101 (29 U.S.C. Sec. 151) further outlining the general policies of the Act, it is the announced intention through the provisions of this legislation to:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain *substantial* obstructions to the free flow of commerce and to mitigate and eliminate these obstructions. . . ."

Likewise, in the same Section, Sub-section (d), another objective is to prevent diminution of employment and wages *in such volume* as *substantially* impairs or disrupts the market for goods flowing from or into the channels of commerce.

Also, in Section 2 of Section 101 (29 U.S.C. Sec. 152) the term "affecting commerce" is described as "burdening or obstructing commerce or the free flow of commerce, . . ."

Moreover, in Section 203(a) (29 U.S.C. Sec. 173) under "Functions of the Service" it is spelled out clearly that it is the duty of the Service to prevent or minimize interruption of the *free flow of commerce.* In Sub-section (b), the terminology again refers to ". . . such dispute threatens to cause a *substantial* interruption of commerce." Immediately following, it provides that the Director and the Service are di-

rected to avoid attempting to mediate disputes which would have only a *minor affect on interstate commerce.*

Again, just immediately prior to Section 201 (29 U.S.C. Sec. 171) is this heading in bold letters: "CONCILIATION OF LABOR DISPUTES: *NATIONAL EMERGENCY.*"

Similarly, Section 204 of the Act (29 U.S.C. Sec. 174) provides for a formula in order "to prevent or minimize interruptions of the free flow of commerce."

In Section 208(a) (29 U.S.C. Sec. 178) it is observed that the United States Government may participate on an emergency basis where an *entire industry* or a *substantial part thereof* is involved, or where the *national health* or *safety* is imperiled.

Even Section 301(a) (29 U.S.C. Sec. 185), specifically and clearly vests jurisdiction only in an industry ". . . *affecting commerce as defined in this Act,* . . ."

The apparent and significant intention of the Congress in using this clear language is to give our federal courts jurisdiction in those actions which *vitally* affect commerce, an industry as a whole, or the general welfare of the community. It is designed to prevent a tie-up of any given industry, or a *substantial* portion thereof, so as to avoid crippling seriously a mass project within an entire industry or to place in jeopardy the necessities of a people within a particular community. The image projected is large. This Act was invoked in the recent steel strike which seriously affected the lives of thousands of our citizenry.

In contrast, the facts in question cannot by any stretch of the imagination be considered so as to have a *"substantial"* interruption of commerce. Conversely, the facts are *peculiar only to the six individual Petitioners and this Respondent.* They do not involve an interruption of the free flow of commerce and have no affect upon the welfare of a community or an industry.

The *sole* purpose of this action is to seek alleged back wages, health and welfare benefits, pension benefits and vacation pay as well as reinstatement of six former employees who purportedly have been employed continuously elsewhere since February 16, 1960 (R. 19). It is significant to read the exact demands contained in the conclusion of the complaint (R. 6-7).

II.

The Identical Issues Have Already Been Resolved by This Court.

This Court reviewed thoroughly the same issues presented in this action in 1955. The case of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation,* 348 U. S. 437, 99 L. Ed. F10, 75 S. Ct. 488, involved an action brought by a Union on behalf of many employees for accrued wages which the employer refused to pay in an alleged violation of a collective bargaining agreement between the Union and the employer. In affirming the United States Court of Appeals for the Third Circuit and the United States District Court for the Western District of Pennsylvania, this Court held that Section 301 did not confer jurisdiction on an action involving a monetary

accounting between the employer and employee because a favorable "... interpretation would bring to the federal courts an *extensive range of litigation* heretofor entertained by the states ..."

In keeping with the theory advanced as to the meaning of the Act, as outlined in the immediately preceding topic, it is interesting to note one of the many findings in the *Westinghouse* case, *supra*, as follows:

> "*Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the Union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one.*"

Also, this Court further observed that there was no suggestion that Congress, at a time when its attention was directed to congestion in the federal courts, particularly in the heavy industrial areas, intended to open the doors of the federal courts to a *potential flood* of grievances based upon an employer's failure to comply with terms of a collective bargaining agreement relating to compensation and which, if and when violated, gives a cause of action to the individual employee. The decision further reflected that employees have always been able to enforce their individual rights in the state courts.

Mr. Justice Frankfurter announced the judgment of the Court in an opinion in which Mr. Justice Burton and Mr. Justice Minton joined. Mr. Chief

Justice Warren and Mr. Justice Clark concurred as did Mr. Justice Reed. This opinion reflects minute deliberation, consideration and research. There was no doubt whatsoever in the minds of these six members of the Court that Congress did not intend to authorize a Union to enforce in a federal court *"the unique personal rights"* of an employee to receive compensation for services allegedly rendered his employer. A seventh member, Mr. Justice Harlan, took no part in the consideration or decision of this case, while Mr. Justice Douglas and Mr. Justice Black dissented.

The foregoing decision is sound logically and clear theoretically. The Petitioners contend that *every* grievance award should be the subject of jurisdiction in a federal court. Let us view the impact this would have upon our federal court system. In the first place, a grievance that was decided on the local leval, comparable to the Joint Local Area Committee in the instant contract (R. 8), is not appealable in the grievance procedure where a majority vote has been had. Thus, if one of the parties did not comply with the grievance award rendered at the *lowest* level, the Petitioners contend it should be enforced in the local United States District Court, whether it involved one employee for one day's salary or whether the employee has left his post of duty owing the employer a sum of money, regardless of how insignificant it may be.

There are thousands and thousands of collective bargaining agreements covering hundreds of thousands of employees in our fifty states, an example of which is mentioned in footnote 4 on page 11 of the Peti-

tioner's brief. When we consider the *magnitude* of this potential volume of cases, it is readily apparent as to the judiciousness and logic of the decision in the *Westinghouse* case, *supra*. If the Petitioners' version were adopted, and *all grievance awards* entered on a local, state or area level were brought to the federal courts for enforcement, a city the size of Louisville, Kentucky, undoubtedly would have to double its federal court facilities, for it is difficult to envision the large number of individual accounting cases which would be instituted solely for the purpose of receiving money awards. Extending this to a national level, the entire federal jurisprudence processes would necessarily have to be revolutionized.

Another significant and sound pronouncement in the *Westinghouse* case, *supra*, is that the collective bargaining contract itself is not a contract of hire; that not until an employee enters into an individual contract of hire and performs services does the employer become bound to pay the particular employee the specified wages; and if there were a breach in this case, which the Respondent vehemently denies, it was a breach of the *individual* employment contract and not otherwise. Again, the soundness of this theory cannot be attacked for there is definitely an employer-employee relationship between the two. This is evidenced by the fact that the employer withholds federal, state and city income taxes, makes contributions to the Social Security benefits of the employees, pays unemployment insurance benefits, workmen's compensation insurance premiums and performs many other

functions solidifying the personally unique contractual relationship between the employee and his employer. Otherwise, the Union would be an independent contractor and obligated to furnish the services of *its employees to the employer,* which is without foundation.

What, then, is the meaning of the provisions in Section 301 of the Act? The United States Court of Appeals for the Tenth Circuit in the case of *United Steelworkers of America (AFL-CIO), Local Union No. 4264* v. *New Park Mining Company*, 273 F. 2d 352 (1959), has an excellent approach on page 355. That Court in discussing the provisions of Section 301 stated that federal court jurisdiction has been restricted to contract violations of *"peculiar concern"* to the Union as an organization, such as agreements to *arbitrate* wages, hours and conditions of employment, etc. (*United Steelworkers of America* v. *Pullman-Standard Car Co.*, 3 Cir., 241 F. 2d 547). Federal jurisdiction, according to the same decision, does not extend to the enforcement of rights which are "uniquely personal" to the employees, such as *back wages* and *vacation pay.*

The same decision further points out that although Rule 17(a), F. R. Civ. P. authorizes the Union being sued as the party in whose name the bargaining contract was made for the benefit of the employees, *it does not operate to confer jurisdiction which does not otherwise exist.* The court also said: "The claimed benefits ran to the employees, not to the Union, and they could not *aggregate* them for purpose of federal jurisdiction."

It is contended, therefore, that in keeping with the decisions of this Court in the *Westinghouse* case, *supra*, the general facts and conditions herein continue to be the same and the potential results *even more frightful* if the policy were altered. Individual accounting rights for back wages and vacation pay are taboo. The federal courts were never designed to become a collection agency in the common monetary disputes between employers-employees, especially where there has been a termination of the individual contract, be it specific or implied. *Specific performance* actions to enforce agreements to arbitrate wages, hours and conditions of employment where an industry, "substantial" commerce or a community is involved would appear to be an application. Where there has been a formal arbitration involving policies of an *overreaching* character, then such arbitration award could and should be enforced.

Regardless, however, of how it may be sized, shaped, or viewed, the federal courts certainly are no place for the bars to be let down and to be used as collection agencies in the purely accounting monetary controversies which are inherent only to an interpretation of the individual employee-employer contract of employment. *Every* employee in any factory enters into such an agreement when he commences work at the factory or terminal and it is these personal controversies which have no place on the dockets of our federal courts.

III.

The State Court Has Assumed Jurisdiction.

In keeping with the observations of this Court in the *Westinghouse* case, *supra*, it is of unusual interest to note (R. 16) that a suit was filed on January 28, 1960, by the Respondent against all of the Petitioners in Action No. 47351, in the Jefferson County, Kentucky, Circuit Court, Chancery Branch, First Division, and that the parties are identical. It is further observed that all of the Petitioners are duly before the Court in that action and have filed responsive pleadings thereto and that a restraining order was entered on the same day; that said action arose out of the same circumstances and involves the same issues; that jurisdiction has already been assumed and a final determination has not been had in the State Court action; and that no petition for removal to the United States District Court was asked or granted. The Petitioners are now estopped from bringing this action, which was filed on May 17, 1960.

Under the decision of *Dowd Box Company* v. *Courtney*, 368 U. S. 502, this Court simply affirmed the decision of the court of last resort of Massachusetts in that the *state courts had concurrent jurisdiction* over matters involving Section 301. This decision, in footnote 4 at page 483, points out that 28 U.S.C. Sec. 1331 limits actions in the federal courts if they do not involve the sum or value of $10,000.00. It is obvious from the prayer contained in the original complaint herein, *supra*, that such amount could not be involved

and therefore jurisdiction should not be had in the federal courts.

It is interesting to note the following conclusion contained in the *Dowd Box Company* case, *supra*, as follows:

> "*This basic purpose of Section 301* is epitomized in the Senate Report; it is apparent that until all jurisdictions, and particularly the federal government, *authorizes actions against labor unions as legal entities*, there will not be the mutual responsibility necessary to vitalize collective bargaining agreements."

Again, his decision in no way deviates from the principles announced in the *Westinghouse* case, *supra*, and confirms again that federal jurisdiction should not be had in this instance.

IV.

Petitioners Themselves Breached the Collective Bargaining Agreement and Are Now Estopped From Claiming Relief.

The *chief benefit* accruing to the Respondent in entering into the collective bargaining agreement was to obtain relief from strikes, lockouts, tie-ups or other types of harassment and inconvenience from its employees. Section 1 of Article VIII of the agreement (R. 8) provides as follows:

> "The Unions and the employers agree that there shall be no strike, lockout, tie-up, or legal proceedings *without first using all possible means*

of a settlement, as provided for in this agreement, of any controversy which might arise.

"Disputes shall first be taken up between the employers and the Local Union involved. Failing adjustment by these parties, the following procedure shall then apply: . . ."

Let us examine the actions of the Petitioners. Prior to January 25, 1960, Local 107 of the same Union located at Philadelphia, Pennsylvania, with the same type of contract as involved herein, arbitrarily breached said contract and created a tie-up, went on strike causing a work stoppage without first using any means whatsoever for settlement, all contrary to the said written contract; that members of Local 107, which has the same International President and identical International Constitution and Rules and Regulations as Local 89, caused to, and did, send numerous of its members to the Louisville terminal of the Respondent, arriving during the work day of January 25, 1960, and commenced carrying and displaying conspicuously strike signs with reference to this Respondent (R. 18).

Without any warning or notice whatsoever, the six individual Petitioners herein left and abandoned their posts of employment at the said time and place and Petitioner Elvin Peay, Steward, and John West, Business Agent of Local 89, informed this Respondent that Local 89 was on strike against this Respondent and that it was an authorized one (R. 18).

The six individual Petitioners, after abandoning their posts of employment, went to the outer entrance

of the Respondent's terminal and proceeded to, and did, *march back and forth near said entrance carrying signs* "Local 89 on Strike" and "Riss-Strike" and *physically threatened customers, invitees and other employees* of the Respondent who were seeking to enter and depart from the said terminal. As a result thereof, the Petitioners, and each of them, acting in concert with each other, did strike, committed a tie-up and work stoppage and that the same continued for a period of several weeks (R. 19). All of the foregoing is completely contrary to Section 1 of Article VIII quoted hereinabove, and other provisions of the contract.

The Petitioners have endeavored to excuse their conduct by merely stating that they had the right to *refrain from crossing a picket line.* As the record clearly shows, the individual six Petitioners not only deserted their posts, *without any notice whatsoever,* but *joined the strike line and actively and physically participated in committing tie-ups and a work stoppage* as far as the business of the Respondent was concerned (R. 19).

In addition, all of the Petitioners violated Subsection (g) of Article VIII (R. 9) when they refused to discuss or submit to the grievance procedure. As pointed out by the United States Court of Appeals for the Sixth Circuit, the Petitioners also violated Article IX as follows:

> "The insistence by any employer that his employee . . . go through a picket line after they have elected not to, and if such refusal has been

approved in writing by the responsible officials of the Central States Drivers Council, shall be sufficient cause for an immediate strike of all such employer's operations *without any needs of the Union to go through the grievance procedure herein*" (R. 29).

There is no allegation in the complaint that the refusal to go through the picket lines was given such approval. No allegation could be made because the employees left and joined the picket line without taking the matter up with the Respondent, the Central States District Council or anyone else except their Union.

Likewise, the Union failed to prevent a strike or to effect a fair settlement, or to do anything to minimize the strike in derogation of the following paragraph of Article IX:

> "The Union agrees that, in the event the employer becomes involved in a controversy with any other Union, the Union *will do all in its power* to help effect a fair settlement."

Although under the contract, the Union, as above, is to "do all in its power" to help effect a fair settlement, it did nothing whatsoever except to have its Business Agent and Steward to inform that Local 89 was on strike against this Respondent (R. 18). Thus, the Union failed *to attempt* any means of a settlement or clearance through the Central States Drivers Council, *or even discuss the proposed strike with the Respondent*, all contrary to Articles VIII and IX of the contract as well as being in opposition to the

provisions of Section 204(a) (29 U.S.C. Sec. 174) which places a co-equal obligation upon the Union to cooperate for the purpose of settling amicably controversies in question. The pleadings fail to reflect that the Union *complied* with any of these. Therefore, they do not state a cause of action.

It will be further observed that if the Union did not authorize the strike, the Respondent had the "sole and complete right" to discharge immediately any employee who had participated in the work stoppage for a period of twenty-four hours (R. 25).

From the pleadings, it is conclusive that a strike and work stoppage were precipitated by the Petitioners herein without giving *any* notice whatsoever to the Respondent, all contrary to the provisions of the contract and in opposition to the very principles which caused the Respondent to enter into it, that is, "to live and let live."

When the work stoppage, tie-up and strike were engaged in without notice by these Petitioners, the Respondent had no choice except to make other arrangements for handling its business, which it did on or about February 1, 1960, by separate agreement with an independent contractor (R. 20), and which system is still utilized by the Respondent.[1]

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[1] In *United Steelworkers of America* v. *New Park Mining Company*, 273 F. 2d 352, it was pointed out that courts have affirmed the right, whether inherent or expressed, to sub-contract work usually performed by employees, without violating its bargaining contract even though its action brought the contract to an end before its expiration date, and cites numerous cases therein. The initial precipitation, however, was caused by the breach of the contract when the Petitioners, without notice, joined the strike line in an *affirmative* manner.

The Petitioners, and each of them, were instantaneous in dealing strong blows to the Respondent, and without any prior notice whatsoever to it. These actions breached and terminated the collective bargaining agreement which had not been in effect since the Petitioners abandoned their posts of employment. When they came back two and one-half weeks later on February 16, 1960, seeking reinstatement, back wages, vacation benefits, etc., the door had been opened by them, but "the hall was empty." From the pleadings and the exhibits themselves, it is readily apparent that the Petitioners not only breached and terminated the contract by their unseemingly conduct, but they, believe it or not, came back on February 16, 1960, and requested reinstatement, back pay, etc., and when they were rightfully refused, they then, for the first time, directed their thought towards the grievance procedure which was no longer available after the Petitioners elected to and did breach the contract. This is simply a case where the Petitioners desire to "have their cake and eat it too."

It will be observed that the Respondent *definitely denies* that the grievance award was processed through the channels as "provided in the contract" (Third Defense, R. 16).

Likewise, the First Defense of the answer and counterclaim (R. 16), raises the insufficiency of the allegations contained in the complaint to state a proper cause of action in view of the provisions of the agreement itself. Factually, and legally, the complaint fails to state a cause of action in light of the contract, a

complete copy of which was filed with the complaint and presumably is with the original record herein as requested by the Respondent.

V.

Additional Points and Authorities Relied Upon by the Respondent.

1. In addition to the *Westinghouse* case, *supra*, and the "eclectic theory" announced therein, which is to the effect that the bargaining contract is not a contract of individual hire, the decision in *Communications Workers of America, AFL-CIO* v. *Ohio Bell Telephone Co.*, 160 F. Supp. 822, affirmed in 265 F. 2d 221, Sixth Circuit Court of Appeals, Cert. denied, 361 U. S. 814, also is *precisely* in point. This case involved wages of striking employees, pension fund, vacation allowances, sickness and death benefits, just as in instant case. Again, this Court has ruled that uniquely personal rights of an employee are not subject to Section 301. The refusal of this Court to grant certiorari in this case is an *affirmation and not a deviation* from the principles pronounced in the *Westinghouse* case.

2. In *Textile Workers Union* v. *Bates Manufacturing Co.*, 158 F. Supp. 410 (1958), Judge Gignoux distinguished clearly at page 412 as to the differences in the *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, decision and the *Westinghouse* case. As in the last mentioned decision, Judge Gignoux further pointed out that it was a *refusal to pay back wages, and not the underlying*

reason therefor, which precipitated that suit and that such was a "uniquely personal" right and could not be enforced in a federal court. The identical facts and principles apply in this instance.

3. This Court in *Local 174, Teamsters, Chauffers, Warehousemen and Helpers of America* v. *Lucas Flour Company,* 7 L. Ed. 2d 593, 82 S. Ct. —— (decided March 5, 1962), again held that our state courts had concurrent jurisdiction over Section 301 and that the strike in that case was a *violation of the contract.* In that action, it was pointed out that there was a compulsory arbitration clause and that arbitrary striking without resorting to the grievance procedure was a *definite violation.* This Court further observed that in a consistent course of decisions, the Courts of Appeals of at least five Federal Circuits have held that a strike to settle a dispute which a collective bargaining agreement provides shall be settled exclusively and finally by compulsory arbitration, *constitutes a violation of the agreement.* Thus, when the six individual Petitioners joined the strike line and acted in concert to and did constitute a work stoppage, they breached the collective bargaining contract and obviated and made moot any further grievance procedure.

4. In *International Ladies' Garment Workers' Union* v. *Jay-Ann Co.,* 228 F. 2d 632, the Fifth Circuit also held there was no federal jurisdiction under Section 301 of the same issues, and that an employer, under the terms of the collective bargaining agreement, would not have to make contributions to the health and

welfare fund because it involved an individual and personal accounting between union members and the employer.

5. Another decisive decision is that of *Local Lodge #2040, International Association of Machinists* v. *Servel, Inc.*, 268 F. 2d 692, certiorari denied (1959), 361 U. S. 884, 80 S. Ct. 155, 4 L. Ed. 120, which was decided by the Seventh Circuit and followed also precisely the principles enunciated by this Court in the *Westinghouse* case, *supra*. The *Lincoln Mills* case, *supra*, is likewise quoted at length in such decision and appropriate distinctions were made. This Court approved such principles and distinctions by denying certiorari as listed above.

6. The Seventh Circuit found the same results in the case of *United Steelworkers of America* v. *Galland-Henning Mfg. Co.*, 241 F. 2d 323, and again denied an accounting.

7. Likewise, in *Textile Workers Union of America* v. *Cone Mills Corporation*, 166 F. Supp. 654 (1958), the United States District Court at Greensboro, North Carolina, came to the same conclusion in keeping with the numerous mandates of this Court.

8. Again, it was held that Section 301 conferred federal jurisdiction only to contracts of "peculiar concern" and not to perfunctory personal accounting claims between employers and employees (*United Mine Workers of America* v. *Lee Roncco, Jr.*, 204 F. Supp. 3, 1962).

9. *United Steelworkers of America* v. *Pullman-Standard Car Mfg. Co.* (1957), 241 F. 2d 547, 552,

is another case reflecting that "unique personal rights" are not within the realm of federal jurisdiction.

The authorities are unanimous in making it clear that the bars will not be lowered so that money claim controversies between employers and employees may flood the federal courts. The *true parties* in this case are the Petitioners who merely desire monetary awards for *themselves*.

VI.

Discussion of Points and Authorities Relied Upon by the Petitioners.

1. Great reliance is had by Petitioners upon *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U. S. 448. Such was merely an action to require the employer to *arbitrate grievances* as its collective bargaining contract required it to do. It did not deal with the collection of alleged unpaid compensation and other benefits claimed under the individual contracts of employment with individual employees, which the Supreme Court dealt a death blow in the *Westinghouse* decision and which is involved solely in instant case.

In the *Lincoln Mills* case, *supra*, the attention of the Court is also respectfully directed to footnote 9 on page 982. It is as follows:

> "Whether there are situations in which *individual employees* may bring suit in an appropriate state or federal court to enforce grievance rights under employment contracts where the collective bargaining agreement provides for arbitra-

tion of those grievances *is a question we do not reach in this case.* Ct. Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U. S. 437, 460, 464, 99 L. Ed. 510, 524, 75 S. Ct. 488; Moore v. Illinois Cent. R. Co., 312 U. S. 630, 85 L. Ed. 1089, 61 S. Ct. 754; Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577; Transcontinental & Western Air, Inc. v. Koppal, 345 U. S. 653, 97 L. Ed. 1325, 73 S. Ct. 906."

2. The Petitioners cite *Retail Clerks* v. *Lion Dry Goods, Inc.*, 369 U. S. 17, as a reliance for deviation in the law as established previously by this Court. In that instance, the parties ended their dispute with the Toledo Labor Management-Citizens Committee, a local mediation and arbitration body. It did not involve collection of "uniquely personal" claims, but did involve the enforcement of an award which had been arrived at in a manner purely satisfactory to both parties, irrespective of whether the same resulted from a "contract" or "Statement of Understanding" satisfactory to all parties.

3. Great stress is accorded by the Petitioners to the effect that the so-called "grievance award" in this case was entered in accordance with the contract. This was specifically denied by the Respondent (R. 16, Third Defense). Where the Petitioners *disregarded and emasculated the contract by complete breach, as found by the Sixth Circuit Court of Appeals,* there was not and could not have been any breath or vitality left in the grievance procedure. The collective

bargaining contract was dealt a death blow, *and has not been and cannot be revived,* when the Petitioners physically and affirmatively joined the strike line and *carved out the very essence of the protection given to the Respondent by the contract.*

4. This Court made good law in the *Westinghouse, Ohio Bell Telephone Co., Servel* cases, *supra,* and others, which have proven to *withstand the test of the ages. None* of the cases cited by the Petitioners gives *any* plausible merit or logic for overturning and upsetting the previous rulings of this Court. Their citations are based merely upon far-fetched theory, innuendo and wishful thinking. If federal jurisdiction were invoked, it would prove only a source of harassment and confusion to all concerned, especially the federal courts.

CONCLUSION.

It is respectfully submitted that, in view of the points and authorities cited herein, the decisions of the two courts below should be affirmed.

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